

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of	)	
	)	
Public Notice Requesting Public	)	ET Docket No. 02-135
Notice Requesting Public Comment	)	(DA 02-1311)
On Issues Related to Commission's	)	
Spectrum Policies	)	

To: Spectrum Policy Task Force

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiary, U. S. Cellular Corporation,<sup>1</sup> (collectively "TDS"), by its attorneys, submits its comments in response to the Commission's *Public Notice*, "Spectrum Policy Task Force Seeks Public Comment on Issues Related to the Commission's Spectrum Policies," released June 6, 2002 (DA 02-1311). TDS is limiting its comments to the Commission's policies defining geographic service area size for auction spectrum because of the central role of service area size in promoting, through market-based approaches, the competitive development of advanced technologies in all areas of the country, particularly rural and less densely populated areas.

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<sup>1</sup> U.S. Cellular Corporation provides cellular systems serving approximately 17% of the land area and approximately 9% of the population of the United States (approximately 24.1 million people).

## Introduction

TDS agrees with and supports the Commission's conclusion in numerous prior spectrum allocation proceedings that geographic service area licensing is a great improvement over site-by-site licensing. These predetermined service areas provide an orderly structure for licensing and foster efficient utilization of spectrum.

The difficulties which carriers have had in planning for new and expanded spectrum-based services in regional and rural markets arise because, in the absence of consistent guiding principles, the Commission has tended to select geographic service area sizes on an ad hoc basis, in some recent cases selecting nationwide, MEA and EAG areas for initial licensing of new or reallocated spectrum. As explained below, this effectively excludes any possibility of regional/rural carriers winning any portion of these newest spectrum resources at auction.

We request that the Commission establish a guiding principle fostering initial license opportunities for a wide variety of applicants, including regional and rural carriers, based upon the adoption of geographic service area sizes recognizing the limited geographic scope of the service offerings in regional and rural market areas and the continuing commitment of regional/rural carriers to meet customer needs for spectrum-based services in rural areas. Congress had it right when it adopted Section 309(j)(3) and (4) of Communications Act of 1934 ("Act") which mandates equitable distribution of licenses, economic opportunity for a wide variety of applicants and a commitment to expanded service in rural and underserved areas. These statutory goals should be implemented as guiding principles of

spectrum policy so that regional/rural carriers are not inhibited or precluded from moving forward with their long-term plans for spectrum-based services because of a lack of regulatory certainty.

### Discussion

#### 1. Promoting Opportunities for a Wide Variety of Applicants is Consistent with the Commission's Congressional Mandate

We agree with the Commission's conclusion in its Report and Order regarding reallocation and service rules for the Lower 700 MHz Band that "... licensing ... small geographic areas balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of spectrum-based services."<sup>2</sup> This decision reflects sound public policy and is consistent with Congressional mandates.

Specifically, Section 309(j)(3)(A-B) of the Communications Act of 1934, as amended ("Act") requires the Commission to promote "...the development of new technologies, products and services for the benefit of the public...in rural areas" and "...[to ensure that] new and innovative technologies are readily accessible to the American people...by disseminating licenses among a wide variety of applicants."

Related statutory requirements under Section 309(j)(4)(C) of the Act require the Commission to promote equitable distribution of licenses and service among geographic areas, economic opportunity for a wide variety of applicants, and rapid deployment of new technologies and services.

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<sup>2</sup> Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, (FCC 01-364) released January 18, 2002, GN Docket No. 01-74, para. 95. ("Lower 700 MHz Report and Order").

Taken together these provisions establish both general and specific objectives for the Commission to structure its service rules and related spectrum auctions to enhance opportunities for new and innovative services in rural areas which should be guiding principles for future spectrum allocation proceedings.

2. Selection of Small Geographic Service Area Sizes Corresponds to the Needs of Many Customers, Including Customers of Small Regional and Rural Carriers.

The selection of small geographic service areas preserves opportunities for regional/rural carriers to provide an important source of competition, variety and diversity in rural and less densely populated areas. As the Commission stated in its Lower 700 MHz Report and Order, "...smaller areas also may correspond to the needs of many customers, including customers of small regional and rural providers."<sup>3</sup> The Commission should recognize in its spectrum policy that the adoption of large geographic service areas, such as nationwide, MEA or EAG licensing, are not adequate to meet the needs of customers served by small regional and rural carriers and that adoption of small geographic service areas is appropriate to meet the needs of these customers.

3. Selection of Large Geographic Service Area Sizes are Unfair and Unworkable for Regional/Rural Carriers Serving Rural and Less Densely Populated Markets.

A balanced approach to the selection of geographic service area size also helps to avoid the exclusion of regional/rural carriers from acquiring spectrum at auction in bands where only large geographic service areas are permitted.

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<sup>3</sup> Id. at para. 96.

The problem for regional/rural carriers is that bidding for a large geographic service area license, such as a nationwide, MEA or EAG license, requires access to financial resources which are either unavailable or present highly risky financial challenges. This means that the Commission's selection of large geographic service areas can have the effect of precluding bidding and thereby depriving regional/rural carriers of realistic opportunities to obtain spectrum. Also, even if regional/rural carriers were able to obtain financing to bid on a large geographic service area license, they are disadvantaged by the disproportionate financial risk and associated transactional costs of partitioning spectrum which is not essential to their customers' needs.

4. Regional/Rural Carriers which are Unable to Bid on Large Geographic Service Areas are Unlikely to Meet Their Spectrum Needs via Partitioning, Disaggregating, Secondary Market or Affiliate Relationships.

A spectrum policy supporting adoption of smaller geographic service area sizes so that regional/rural carriers have an opportunity to participate in spectrum auctions is also needed because the Commission's partitioning, disaggregation, secondary market and affiliation rules are not effective tools for these carriers to acquire spectrum resources.

It seems self evident that there is a reasonable likelihood that national and super-regional carriers will simply choose to warehouse spectrum won at auction even though they may have no near-term plans for its use. They probably conclude that it is less costly to retain underused spectrum rights than to risk that a sale of spectrum rights will deprive such carriers of spectrum which might be needed at

some future date. In addition, it is likely that such carriers will be focused on deploying technologies and capturing market share in metropolitan markets for many years after licenses are initially awarded so that disaggregation and partitioning are simply not options during this period, if ever. Another problem is that national/super-regional carriers are highly unlikely to disaggregate and to partition spectrum to regional/rural carriers that are actual or potential competitors. In the event there is any disposition at all to dispose of spectrum, national/super-regional carriers are likely only to do so pursuant to affiliate relationships which limit or prohibit competition between the affiliate and that national carrier.

In sum, regional/rural carriers are likely to be precluded, or at a minimum will encounter substantial (and perhaps insurmountable) delays and costs in their attempts to obtain spectrum rights from national/super-regional carriers. Adoption of our proposal will help enhance competition and will promote the early deployment of advanced technologies by enabling regional/rural carriers to bid directly on smaller geographic service area licenses.

### Conclusion

One of the important issues before the Commission is how to encourage licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. Rather than make decisions about geographic service area size on an ad hoc basis, the Commission should recognize in its spectrum policies the importance of

adopting service area sizes appropriate for regional/rural carriers to provide them the regulatory certainty they need to move forward with long-term planning for the spectrum-based services in the areas they serve. By affording realistic bidding opportunities to a variety of applicants, the adoption of small geographic service areas will enhance competition and promote early deployment of advanced technologies in a manner consistent with the Commission's statutory objectives under Section 309(j) of the Act.

Respectfully submitted,

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